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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,166

04/16/2004

Warren J. Grosjean

8278

7590

05/18/2005

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EXAMINER

LEE, JONG SUK

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/825,166

Applicant(s)

GROSJEAN, WARREN J.

Examiner

Jong-Suk (James) Lee

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1/18 & 1/2 \$ 4/1/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The supplemental amendment including corrected amended claims 1-11 filed April 1, 2005 has been entered.
2. It is noted that the amended specification portion in the amendment filed January 18, 2005 has not been entered because it is not clearly stated for the replacement of the paragraph including page number and paragraph locations.
3. The substitute specification filed January 28, 2005 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: the statement as to a lack of new matter under 37 CFR 1.125 (b) is missing; a marked-up copy of the substitute specification including whole content has not been supplied.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher (US 4,481,242).

Fletcher discloses an aquatic weed barrier comprising a method and apparatus comprising

Art Unit: 3673

a strip of plastic films having a plurality of gas release ports (26, 28) which may be slit or holes (see Figs. 4-9) angled or longitudinally arranged on the plastic film in a ditch/irrigation channel (27) and a transverse hold down means/heavy ballast/rocks (32, 33) attached/positioned thereon and the plastic strip is located longitudinally, the polymeric/plastic film having an inherent toughness for withstanding the abrasive action of water and rocks (see Figs. 1-11; col.2, lines 53-68; col.3, lines 1-13).

With respect to the dimension of the plastic strip and the distance for the placement of the strip, an artisan within the ordinary skill in the art would have decided the dimension and positioning distance for the strip of plastic in order to effectively cover the desired area to be treated.

6. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak et al (US 6,558,079).

Kozak et al discloses a method and apparatus comprising of a strip of plastic/polymeric films (182, 184, 186) with a transverse hold down means/heavy adherent substance/ballast (200) attached thereon and the plastic strip is located longitudinally, the polymeric/plastic film having an inherent toughness for withstanding the abrasive action of water and rocks (see Fig. 4; col.10, lines 11-32).

With respect to the dimension of the plastic strip and the distance for the placement of the strip, an artisan within the ordinary skill in the art would have decided the dimension and positioning distance for the strip of plastic in order to effectively cover the desired area to be treated.

Art Unit: 3673

With respect to the specific gravity of the polymeric material, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide one or less than the water specific gravity by controlling the dimension of the plastic and further changing the material to manufacture.

7. Claims 5, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak et al in view of DeGarie (US 6,357,964). Kozak et al have been discussed above.

However, Kozak et al fails to disclose or fairly suggest tubes as the hold down means filled with heavy materials. DeGarie discloses a drainage system with membrane cover for covering the reservoir having a cover (22) with a plurality of weights, which is tubular shaped (32, 34) to hold down the cover (see Figs 1-2; col.1, lines 31-33; col.4, lines 8-54).

Therefore, in view of DeGarie et al, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to replace the hold-down means with the tubular shaped weight in order to hold the tubular weight together with side-by-side relationship for equal distribution of the holding weight.

8. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak et al in view of Fletcher (US 4,481,242). Kozak et al have been discussed above.

However, Kozak et al fails to disclose or fairly suggest gas release port in the plastic sheet located in the drain/irrigation ditch. Fletcher discloses an aquatic weed barrier comprising a strip of plastic films having a plurality of gas release ports (26, 28) which may be slit or holes (see Figs. 4-9) angled or longitudinally arranged on the plastic film in a ditch/irrigation channel

Art Unit: 3673

(27) (see Figs. 1-11; col.2, lines 53-68; col.3, lines 1-13).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the plastic/polymeric liner cover of Kozak et al. by placing it on the channel of the irrigation ditch and providing a plurality of gas release holes/slits as taught by Fletcher in order to successfully perform the weed barrier function.

With respect to the specific gravity of the polymeric material, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide greater than the water specific gravity by controlling the dimension of the plastic and further changing the material to manufacture.

### *Response to Arguments*

9. Applicant's arguments with respect to Kozak reference that Kozak teaches an apparatus for covering a landfill covering the compacted fill with biodegradable polyolefin film which is not related to the present invention are not persuasive because it is more limited than the claim scope and the Kozak reference provides the claimed structural elements such as a plastic film with hold down means insofar as the preamble of the present invention, "an aquatic weed suppression means" has not recited in the body of the claim such that patentable weight is not given to the preamble limitation.

With respect to the arguments that DeGrie's weight lines are applied to the waste water pool cover in order to form trough into which rain water flows rather than the hold down means to hold the plastic to the substrate while directing the released gases and further is integral to with the plastic membranes, the Kozak's hold down member/ballast can be modified by

Art Unit: 3673

DeGrie's tubular weight line/ballasting member insofar as the both ballasting material provide to the plastic file/sheet for holding it down. Further, the argument that DeGrie's weight lines are pieces together with a rope-hardly a tube is not persuasive because the tubular shaped weight are being connected together with the rope as shown in Fig. 1 of DeGrie's reference.

With respect to the argument that the Fletcher's gas release port which is more complicated than the simple gas release slits in the present invention, it is not persuasive because the gas release slits of Fletcher is better system than the present invention and have a dual function of releasing gas and further the sun screening as applicant mentioned in the argument.

With respect to the inquires for incorporating the further limitations into the claims mentioned on the supplemental amendment letter filed April 1, 2005, it is advised that the spacing of the hold down members and the material being made up of for the hold down members be treated as a new matter if no support in the "original" specification is provided. In that case, continuation-in-part application may be suggested to be filed for further consideration.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3673

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (571) 272-7044. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford, can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jjl  
May 16, 2005



**Jong-Suk (James) Lee**  
**Primary Examiner**  
**Art Unit 3673**